

SM
Notice of Allowability

Application No.

09/813,990

Examiner

Jeffrey Fredman

Applicant(s)

HIJIKATA ET AL.

Art Unit

1634

-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to ____.
2. ☒ The allowed claim(s) is/are 18,19,23,24,46 and 62-65.
3. ☐ The drawings filed on ____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).


* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date ____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date ____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other ____ |


Jeffrey Fredman
Primary Examiner
Art Unit: 1634

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Thomas Cunningham on March 5, 2004.

The application has been amended as follows:

Claims 1-17 were cancelled.

18. (Currently Amended) A polynucleotide suitable for predicting the efficacy of interferon therapy using interferon- α and/or interferon- β for treating an individual who suffers from hepatitis C virus, comprising a polynucleotide selected from the group consisting of:

- (a) ~~the a~~ polynucleotide of comprising Sequence ID No. 1;
 - (b) a polynucleotide having a nucleic acid sequence that is at least 99.83% identical to Sequence ID No. 1 and having MxA gene promoter activity; and
 - (c) a complementary strand of the polynucleotide selected from the group consisting of (a) and (b) ~~(b)~~
- comprising the polynucleotide of SEQ ID NO: 1 (a), or
comprising the complementary strand of the polynucleotide of SEQ ID NO: 1.

19. (Currently Amended) The polynucleotide of Claim 18, which comprises the polynucleotide of SEQ ID NO: 1 (a).

20-22. (Cancelled)

23. (Currently Amended) The polynucleotide of Claim 18, which comprises the complementary strand of the polynucleotide of SEQ ID NO: 1 (c).

24. (Currently Amended) The polynucleotide of Claim 18, further comprising at least one additional polynucleotide connected to said polynucleotide, the additional polynucleotide being selected from the group consisting of a promoter, an enhancer, an upstream activation sequence, a silencers, a upstream suppression sequence, an attenuator, a poly A tail, a nucleus transport signal, a Kozak sequence, an ISRE, a drug resistance factor, a gene of signal peptide, a gene of transmembrane domain, a gene of marker protein, a gene of interferon-responding protein, and a gene of interferon-non-responding protein.

25-45. (Canceled)

46. (Previously presented) A vector comprising the polynucleotide of Claim 18.

47-61. (Canceled)

62. (New) The polynucleotide of Claim 19, which is suitable for predicting the efficacy of interferon therapy using interferon- α and/or interferon- β for treating an individual who suffers from hepatitis C virus.

63. (New) The polynucleotide of Claim 23, which is suitable for predicting the efficacy of interferon therapy using interferon- α and/or interferon- β for treating an individual who suffers from hepatitis C virus.

64. (New) A vector comprising the polynucleotide of Claim 19.

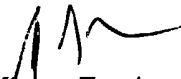
65. (New) A vector comprising the polynucleotide of Claim 23.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Fredman whose telephone number is (571)272-0742. The examiner can normally be reached on 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (571)272-0782. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey Fredman
Primary Examiner
Art Unit 1634